

3 exhibits (a) 8/29/06 letter (b) depo transcript (c) 8/29/06 letter

Relates to motion number #70

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

FIREMAN'S FUND INSURANCE
COMPANY

Plaintiff

v.

FIRE SYSTEMS, INC.;
FIRE SUPPRESSION SYSTEMS OF
NEW ENGLAND, INC.;
PRO CON, INC.; and
PAQUETTE ELECTRIC COMPANY, INC.
Defendants

CIVIL ACTION NO.
04-11578 PBS

AUGUST 31, 2006

**PLAINTIFF'S OBJECTION TO DEFENDANT FIRE SUPPRESSION SYSTEMS'
MOTION TO PRECLUDE EXPERT TESTIMONY**

Now comes the Plaintiff, Fireman's Fund Insurance Company, and respectfully requests this Honorable Court to deny the Defendant Fire Suppression Systems' Motion to Preclude the Plaintiff's Expert Testimony. In support hereof, the Plaintiff states that it was not under a duty to disclose the existence of the pipe fitting under the Federal Rules without specific request, that undersigned counsel for the Plaintiff was not aware of the existence of this pipe fitting, that undersigned counsel for the Plaintiff made the pipe fitting available as soon as possible upon discovery of its existence, that the fitting itself is lacking the significance ascribed to it by Defendant Fire Suppression Systems (hereinafter "FSS"), and that the requested sanction would cause prejudice to the Plaintiff's case far in excess of any prejudice incurred by the Defendant FSS. The Defendant's position that the Plaintiff's experts should not be allowed to offer

testimony, based on the Plaintiff's failure to disclose the existence of this evidence, is unfair and excessively prejudicial to the Plaintiff's case, especially in light of the uncontested lack of bad faith, and the available alternate remedies allowed under F.R.C.P. 37. For these reasons and those set forth in the attached Memorandum of Law, Fireman's Fund respectfully requests the Court to deny the Defendant's motion.

FIREMAN'S FUND INSURANCE COMPANY

By its attorneys,

/s/ Erik Loftus

Erik Loftus, Esquire (BBO# 656315)

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CERTIFICATE OF SERVICE

FIREMAN'S FUND INSURANCE	:	CIVIL ACTION NO.:
COMPANY	:	04-11578 PBS
	:	
v.	:	
	:	
FIRE SYSTEMS, INC.;	:	
FIRE SUPPRESSION SYSTEMS OF	:	
NEW ENGLAND, INC.;	:	
PRO CON, INC.	:	
and	:	
PAQUETTE ELECTRIC COMPANY, INC.:	:	
Defendants	:	AUGUST 31, 2006

I hereby certify that on **August 31, 2006**, a copy of foregoing **PLAINTIFF FIREMAN'S FUND'S OBJECTION TO DEFENDANT FIRE SUPPRESSION SYSTEMS' MOTION TO PRECLUDE EXPERT TESTIMONY** was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Erik Loftus, Esq.
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